UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

BANNUM, INC.	*	
	*	
Plaintiff,	*	
	*	
v.	*	Civ Action 1:03CV00848 PLF
	*	
CITIZENS FOR A SAFE WARD FIVE, INC.	*	
	*	
and	*	
	*	
DARRYLE A. CARTER,	*	
	*	
Defendant(s).	*	

RECEIVED
D.C. OFFICE OF ZONING
2003 APR 17 PM 4:23

NOTICE OF HEARING ON PLAINTIFF'S TO DISTRICT OF COLUMBIA OFFICE OF ZONING

PLEASE be advised that the Plaintiff in the above captioned case will present a Motion for a Temporary Restraining Order seeking to enjoin a Board of Zoning Appeals Hearing against the Plaintiff at 2:00 PM, Monday, April 21, 2003 before the Honorable Judge Paul L. Friedman. A copy of the Motion for a Temporary Restraining Order, Affidavit in Support, Memorandum, and Order are attached.

Dated: April 16, 2003

BZA
Case No. 16998
Exhibit No. 100

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Gaithersburg, MD 20877
Tel: 301.208.9114 / Fax: 301.208.0362

Board of Zoning Adjustment
District of Columbia
CASE NO. 16998
EXHIBIT NO. 100

Respectfully submitted,

Kevin M. Cox (pro hac vice motion pending)
Law Firm of Joseph A. Camardo, Jr.
New York Bar No. 2112167
127 Genesee Street
Auburn, New York 13090
Tel: (315) 252-3846
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Shawn C. Whittaker
DC Bar 468533
9055 Comprint Court, Suite 340
Gaithersburg, Maryland 20877
Tel: (301) 208-9114
Fax: (301) 208-0362

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 17th of April, 2003, a copy of the foregoing Notice was faxed along with the pleadings in this case to DC Corporate Counsel and to Office of Zoning.

Shawn C. Whittaker

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

BANNUM, INC.	*	
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Plaintiff,	*	
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v.	*	Civ Action 1:03CV00848 PLF
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CITIZENS FOR A SAFE WARD FIVE, INC.	*	
	*	
and	*	
	*	
DARRYLE A. CARTER,	*	
	*	
Defendant(s).	*	

MOTION FOR A TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND EXPEDITED DISCOVERY

COMES NOW, Plaintiff, Bannum, Inc. ("Plaintiff"), and files this Motion for a Temporary Restraining Order, Preliminary Injunction, and Expedited Discovery. Plaintiff has also filed along herewith its Memorandum of Law in Support of Plaintiff's Motion for Temporary Restraining Order, Preliminary Injunction, and Expedited Discovery, the certificate of counsel required by Local Civil Rule 65.1(a).

As stated in the supporting Memorandum, Plaintiff moves the Court to enjoin Defendants from any further interference with Plaintiff's Federal Government contract with the Federal Bureau of Prisons for the operation of a Community Corrections Center at 2210 Adams Place, NE in Washington, D.C., and with Plaintiff's business relationship with the Federal Bureau of Prisons, including but not

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limited to its abuse of process before the District of Columbia Board of Zoning Adjustment. Plaintiff also moves the Court for leave to conduct expedited discovery pursuant to Rules 30, 34, and 45 of the Federal Rules of Civil Procedure in this proceeding for the limited purpose of obtaining information in furtherance of its Application for a Preliminary Injunction.

Dated: April 16, 2003

Respectfully submitted,

Kevin M. Cox (pro hac vice motion pending)
Law Firm of Joseph A. Camardo, Jr.
New York Bar No. 2112167
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Auburn, New York 13090
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Fax: (301) 208-0362

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 17th of April, 2003, a copy of the foregoing Plaintiff's Motion for Temporary Restraining Order, Preliminary Injunction, and Expedited Discovery, together with the attached Memorandum of Law in Support, and Accompanying Order were sent via certified mail to Defendants CITIZENS FOR A SAFE WARD FIVE, INC., 1704 17th Street, NE, Washington, DC 20002 and DARRYLE A. CARTER, 534 Hamilton Street, NE, Washington, DC 20002:

Shawn C. Whittaker

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Plaintiff,	*
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	*
and	*
	*
DARRYLE A. CARTER,	*
	*
Defendant(s).	*

****

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND EXPEDITED DISCOVERY

Plaintiff, Bannum, Inc., files this Memorandum of Law in Support of Plaintiff's Motion for Temporary Restraining Order, Preliminary Injunction, and Expedited Discovery and states as follows:

Summary

As stated in Plaintiff's Complaint and the Affidavit of David Lowry filed simultaneously herewith, Defendants have abused the legal process and intentionally interfered with Bannum's Federal contract with the Federal Bureau of Prisons ("BOP") for the operation of a Community Corrections Center ("CCC") at 2210 Adams Place, NE ("2210 Adams Place") in Washington, D.C. by instituting frivolous legal proceedings in District of Columbia Superior Court and before the Board of Zoning Adjustment ("BZA") and, committed

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libel per se by, *inter alia*, falsely stating in a recent press release that Bannum has attempted to "buy local official's (sic) votes" and "ILLEGALLY usurp local zoning laws." Defendants. Upon information and belief, Defendants have resorted to such tortious activity in an effort to impugn Bannum's integrity and thwart its recently-awarded contract with the BOP for the operation of a CCC in Washington, DC. In so doing, Defendants have seriously damaged Plaintiff's excellent business reputation and goodwill that it has worked so hard to establish with the BOP, its only customer, during the past nearly twenty (20) years. Defendants' motive behind their actions is not a concern for the safety and welfare of the community, as they allege, but rather to make room for their own hand-picked contractor to operate the same CCC in the same neighborhood. Defendants' are opposed to Plaintiff opening a CCC because they are politically aligned with Charles Reynolds, Jr., Ms. Dennis M. Shelton, and the BOP CCC on which those individuals are bidding at this time.

Relevant Facts

Plaintiff operates several CCCs throughout the Untied States pursuant to contracts with the BOP. On or about March 24, 2000 and April 3, 2000, respectively, Bannum received Requests for Proposals ("RFPs") No. 200-0593-MA and No. 200-06-04-MA from the BOP for CCC services in the Washington, D.C. area. The RFPs called for a firm

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fixed-unit price requirements contract for said CCC services, and estimated a need for three hundred thirty (330) beds in total.

In furtherance of its proposal, Bannum located a property to lease for the CCC contract at 2210 Adams Place, NE, Washington, D.C. ("the property"). On or about November 16, 2000, Bannum entered into a "Letter of Intent to Lease" with the landlord to secure the property if Bannum were to be awarded the CCC contract, and eventually entered into a formal lease agreement with the landlord for the property. In addition, Bannum began to meet with local officials in earnest in an effort to obtain zoning approval from the District of Columbia for the operation of a CCC. Bannum representatives contacted various D.C. officials and community and neighborhood leaders in the process of attempting to obtain the needed zoning approval.

On or about December 11, 2000, Bannum obtained zoning approval from the District of Columbia allowing Bannum matter-of-right use of the subject property at 2210 Adams Place for the CCC contract. Upon information and belief, at the time it obtained zoning approval from the District of Columbia, Bannum was the only contractor in the United States that had submitted a bid for the subject RFPs which proposed a facility with appropriate zoning of any property in any area of Washington, D.C. and, therefore, Bannum

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was the sole bidder that was being considered by the BOP for contract award.

Subsequently, on or about November 16, 2001, the BOP awarded the contract for CCC services to Bannum. Pursuant to the terms of the Contract, Bannum was to commence performance and operation of the CCC in early 2003.

On February 28, 2003, Defendants published "FOR IMMEDIATE RELEASE" a press release entitled "Community Says Bureau of Prisons and Local Zoning Officials are to Blame for Halfway House Plans Making it This Far," wherein they advertised a meeting scheduled for March 5, 2003 at 6:30 p.m. at the Washington Center for the Aging, 2601 18th Street, NE, Washington, D.C. 20018. See Exhibit "A" of Plaintiff's Complaint. In its press release, Defendants made clear their mission to put Bannum out of business, by stating that "[t]he group [Defendants] has vowed to continue its fight to stop the project, employing both a grassroots outreach component and the legal system (sic)." Not stopping there, Defendants went on in its press release to make the following defamatory statements about Bannum:

> Over the last few weeks, since the CSWF's efforts began to stop the Bannum effort, one major issue has surfaced. **More important than Bannum's attempt to buy local official's votes by taking them to Orlando, Florida for three days and just as serious an offense as Bannum's blatant attempt to ignore the community's voice**

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> **in the process, the issue is Bannum's attempt to ILLEGALLY usurp local zoning laws.**
>
> "We have learned that Bannum has used some slick word play to confuse zoning officials regarding just what kind of facility they're planning to open. All of Bannum's supposed concurrences (sic) of their facility has (sic) been based on their (sic) apparent **intentional deception.** The facility funded by the US Bureau of Prisons is a HALFWAY HOUSE **NOT** a CORRECTIONAL DETENTION FACILTY OR INSTITUTION. You would have to believe that a major corporation like Bannum, Inc. with seventeen facilities across the country understands the difference between a halfway house and an institution (sic)," said Darryle A. Carter of Citizens for a Safe Ward 5, Inc.

Following the publication of the foregoing press release, defendants carried their campaign to shut Plaintiff down one step further by filing a frivolous action against Bannum in District of Columbia Superior Court. In the Superior Court action, Citizens for a Safe Ward Five sought an injunction from the Court revoking Bannum's zoning approval and preventing the BOP from opening the CCC as scheduled. As stated herein above, the basis for Defendant's Superior Court action, i.e. alleged criminal acts on the part of Bannum, is false and completely without merit. Notably, on April 8, 2003, the Superior Court denied Citizens' motion for a preliminary injunction.

In addition to filing a frivolous action in Superior Court, the Defendants have also filed an appeal with the Board of Zoning Adjustment ("BZA"), challenging the zoning approval granted to

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Bannum by the District of Columbia. Once again, Defendants' action is based on false representations made solely in an effort to shut Bannum down.

Defendants further defamed Plaintiff by publishing and posting on the streets of the District of Columbia a flyer falsely alleging, among other things, that Bannum is a "Halfway House...Housing Violent Criminals," that if Bannum opens its CCC, then "sex offenders, arsonists, and child molester (sic) will be allowed back into the community with all of us," and Bannum's "facility already houses developmentally disabled individuals" (see Exhibit "B" of plaintiff's Complaint). These allegations are clearly false for the following reasons: Bannum is proposing to open a "Community Corrections Center" or "CCC" pursuant to a contract with the BOP; the exact identity of the residents who will be "housed" or "allowed back into the community" at the CCC are not even known; and Bannum's "facility" does not house "developmentally disabled individuals" as it has not even commenced its operations, nor will it when it does commence since the BOP does not place these individuals into its CCCs. These false statements were made by defendants in an obvious attempt to cause community uproar and outrage as part of its ploy to force Bannum out of town.

As further evidence of Defendants' efforts to intentionally interfere with its BOP contract and business relations, on January

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25, 2003, Citizens of Ward Five Chairperson Regina M. James sent a letter to Charles M. Reynolds, Jr. in support of its placement and operation of a CCC in the same general location as the one proposed by Plaintiff. See Exhibit "C" of Plaintiff's Complaint. In her letter, Regina James states the following:

> I support you and your associates (sic) bid on the RFP—2000706MA Center 4 located at 1355-57 New York Avenue, NE, Washington, D.C. 20002. I know of the reputation and character of you and your vice-president, Mr. Samuel S. Howlette. I know that you and your organization strive for excellence.
>
> With that your organization has team (sic) up with Ms. Dennis M. Shelton whose integrity is impeccable. She is definitely an asset as your partner. She brings energy and excitement and is not only committed to the welfare and the quality of life of the inmates but to the community that she serves. She has my unadulterated support as your Director of the Facility at Center 4.
>
> With this quality of leadership within the community, it is my pleasure and privilege to endorse and support your bid on the RFP—2000706MA.

The foregoing letter was sent on the official letterhead of "Regina M. James, Advisory Neighborhood Commissioner 5B03." As clearly evidenced by the James letter, Defendants' purported opposition to Plaintiff's CCC in Ward 5 based on concerns of safety and negative impact on the surrounding neighborhood is disingenuous. Defendants are opposing Plaintiff's CCC in Court and before the BZA on these grounds, while at the same time pledging

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support for the opening of a CCC in the same neighborhood by one of Plaintiff's competitors. Defendants' actions are clear evidence that they are opposed to Plaintiff opening a CCC because they are politically aligned with Charles Reynolds, Jr., Ms. Dennis M. Shelton, and the BOP CCC which they are apparently bidding on at this time, and not because of the alleged concerns about which they have testified under oath before the BZA and Superior Court as late as April, 2003.

If Bannum loses its zoning approval for the subject property, its contract with the BOP for CCC services would be terminated for default for Bannum's failure to secure a facility at which to operate. If the relief requested by Plaintiff is not granted, then Plaintiff will be irreparably, and in all likelihood, fatally harmed, rendering Plaintiff without an adequate remedy at law. There is a substantial likelihood that Plaintiff will be "blacklisted" and unable to bid on new procurements or debarred from submitting bids on future BOP, and United States Government contracts altogether. Defendants will suffer no harm if they are enjoined from any further defamation of Plaintiff or interference with Plaintiff's contract and business relationship with the BOP.

Points and Authorities

I. Motion for Temporary Restraining Order Preliminary Injunction:

a. *Legal Standard for Injunctive Relief*:

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The Court considers the same factors in ruling on a motion for a temporary restraining order and a motion for a preliminary injunction. E.g. Vencor Nursing Ctrs., L.P. v. Shalala, 63 F. Supp.2d 1, 7 n. 5 (D.D.C. 1999); National Football League Properties, Inc. v. Coniglio, 554 F. Supp. 1224, 1226 (D.D.C. 1983). This Court may issue a temporary restraining order or a preliminary injunction only when the movant demonstrates that:

> (1) there is a substantial likelihood plaintiff will succeed on the merits; (2) plaintiff will be irreparably injured if an injunction is not granted; (3) an injunction will not substantially injure the other party; and (4) the public interest will be furthered by an injunction.

E.g. Mova Pharmaceutical Corp. v. Shalala, 140 F.3d 1060, 1066 (D.C. Cir. 1998); World Duty Free Americas, Inc. v. Summers, 94 F. Supp.2d 61, 64 (D.D.C. 2000). These four factors are not considered in isolation from one another, and no one factor is necessarily dispositive as to whether preliminary injunctive relief is warranted. CityFed Fin. Corp. v. Office of Thrift Supervision, 58 F.3d 738, 746 (D.C. Cir. 1995). Rather, the factors "interrelate on a sliding scale and must be balanced against each other." Davenport v. International Bhd. of Teamsters, 166 F.3d at 356, 361 (D.C. Cir. 1999) (citing Serono Labs. v. Shalala, 158 F.3d

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1313, 1317-18 (D.C. Cir. 1998), on remand, 35 F. Supp.2d 1 (D.D.C.1999)); see also WMATA v. Holiday Tours, Inc., 559 F.2d 841, 842-43 (D.C. Cir. 1977) (stating that court "examines each requirement in light of the others to determine whether an injunction would be proper").

(1) Likelihood of Success on Merits:

a. Libel Per Se/Libel:

It is highly likely that Plaintiff will ultimately succeed on the merits of the instant suit. The case law has made clear that "[a] defamatory publication need only be injurious to the reputation of another to constitute libel, while libel per se requires an actual imputation of a criminal offense. E.g. Raboya v. Shrybman & Associates, et al., 777 F. Supp. 58, 60 (D.C. 1991); Smith v. District of Columbia, 399 A.2d 213 (D.C. 1979); 53 C.J.S. Libel and Slander §§ 2 and 38. In the instant case, Defendants' press release on February 28, 2003 clearly alleges that Plaintiff attempted to "ILLEGALLY usurp zoning laws," and to bribe local official into approving its zoning application. Section 22-704 of the D.C. Criminal Code expressly makes it a crime to give anything of value to an official "with intent to influence such official's action on any matter which is then pending, or may by law come or be brought before such official in such official's capacity." As stated in the affidavit of David Lowry, Executive Director of

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Bannum, filed simultaneously herewith and in support hereof, these allegations of criminal conduct are false. As such, Plaintiff is likely to succeed on the merits of its claims of libel per se, or alternatively, on its claim for libel.

b. Tortious Interference With Contractual Relations:

With respect to Plaintiff's claims for intentional interference with its contract, "[t]ortious interference with contractual relations arises when a defendant interferes with a contract between the plaintiff and some third party." Weaver v. Gross, 605 F.Supp. 210, 216 (D.D.C. 1985) (citing Donohoe v. Watt, 546 F.Supp. 753, 757 (D.D.C. 1982), aff'd, 713 F.2d 864 (D.C.Cir.1983)). "In order to recover for intentional interference with contractual relations, the plaintiff must prove four elements: (1) existence of a contract, (2) knowledge of the contract, (3) intentional procurement of its breach by the defendant, and (4) damages resulting from the breach." E.g. Sorrells v. Garfinckel's, Brooks Brothers, Miller & Rhoads, Inc., 565 A.2d 285, 289 (D.C. 1989) (quoting Alfred A. Altimont, Inc. v. Chatelain, Samperton & Nolan, 374 A.2d 284, 288 (D.C. 1977)); Conners, Fiscina, Swartz & Zimmerly v. Rees, 599 A.2d 47, 51 n. 6 (D.C. App. 1991). Once these elements are shown, Plaintiff can recover for intentional interference with contract "unless the defendant proves that his or her conduct was justified or privileged." Sorrells, 564 A.2d at

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290.

In the instant case, the BOP awarded Bannum a contract on November 16, 2001 for the operation of a CCC at 2210 Adams Place in Washington, D.C. The Defendants in this case were obviously aware of the existence of this contract when they made their defamatory publications as they reference the contract therein, and their defamatory statements are aimed directly at Bannum's operation of a CCC at 2210 Adams Place pursuant to their BOP contract. With that knowledge, Defendants' have falsely accused Plaintiff of committing "illegal" acts and bribing D.C. officials in order to obtain zoning approval for operation of a CCC at the 2210 Adams Place property, all in an effort to force Bannum out of the picture so that the award of the CCC contract will go to their hand-picked choice, Charles M. Reynolds, Jr. If Defendants are not immediately enjoined from any further interference, Plaintiff will lose its right to use the 2210 Adams Place property, the BOP will terminate its CCC contract for default, and Bannum will be debarred or de facto debarred from contracting with the Federal Government altogether.

c. Tortious Interference With Economic Advantage:

The D.C. Court of Appeals has held that, in order to establish a claim for tortious interference with economic advantage, a plaintiff must show: (1) the existence of a valid business

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relationship or expectancy, (2) knowledge of the relationship or expectancy on the part of the interferer, (3) intentional interference inducing or causing a breach of termination of the relationship or expectancy, and (4) resultant damage. Bennett Enters. v. Domino's Pizza, Inc., 45 F.3d 493, 498 (D.C. Cir.1995). Plaintiff can prove liability with "a strong showing of intent to disrupt ongoing business relations." Id. "Motive or purpose to disrupt ongoing business relationships is of central concern in a tortious interference case…[C]onduct must be more egregious, for example, it must involve libel, slander, physical coercion, fraud, misrepresentation, or disparagement." Genetic Sys., 691 F.Supp. at 423.

In the instant case, Bannum presently operates seventeen (17) CCC contracts with the BOP, and therefore has a longstanding and ongoing business relationship with the BOP. Defendants admit that they are aware of Bannum's business relationship with the BOP in their February 28, 2003 press release, wherein they state, among other things, that "[y]ou would have to believe that a major corporation like Bannum, Inc. with seventeen facilities across the country understands the difference between a halfway house and an institution (sic)," said Darryle A. Carter of Citizens for a Safe Ward 5, Inc." With that knowledge, Defendants' have falsely accused Plaintiff of committing "illegal" acts and bribing D.C.

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officials in order to obtain zoning approval for operation of a CCC at the 2210 Adams Place property, all in an effort to force Bannum out of the picture so that the award of the CCC contract will go to their hand-picked choice, Charles M. Reynolds, Jr. As the case law cited herein above makes clear, libelous conduct by the defendants is so severe that it rises to the level of tortious interference with Plaintiff's economic advantage. If Defendants are not immediately enjoined from any further interference, Plaintiff will lose its right to use the 2210 Adams Place property, the BOP will terminate its CCC contract for default, and Bannum will be debarred or de facto debarred from contracting with the Federal Government altogether.

d. Abuse of Process:

An action for abuse of process lies where the legal system "has been used to accomplish some end which is without the regular purview of the process, or which compels the party against whom it is used to do some collateral thing which he could not legally and regularly be required to do." Morowitz v. Marvel, 423 A.2d 196, 198 (D.C. 1980), quoting from Jacobson v. Thrifty Paper Boxes, Inc., 230 A.2d 710, 711 (D.C. 1967). Abuse of process occurs when there is a "perversion of court processes to accomplish some end which the process was not intended by law to accomplish, or which compels the party against whom it has been used to do some

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collateral thing which he could not legally and regularly be compelled to do." Hall v. Field Enterprises, Inc., 94 A.2d 479, 481 (D.C. Mun. Ct. 1953). The "action will lie even though the process has been validly issued, and regardless of whether there was any probable cause of its issuance ..." Id.; Wilcon v. Travelers Indemnity Co., 654 F.2d 976, 983-84 (5th Cir.1981).

Defendants have initiated legal proceedings against Bannum in D.C. Superior Court and the Board of Zoning Adjustment ("BZA"), wherein they are attempting to do whatever they can to shut Bannum down. Defendants' alleged concerns about safety and the welfare of the neighborhood which they have espoused before these bodies are without merit. The true reason behind Defendants' filing of these actions is revealed in the January 25, 2003 letter from Citizens of Ward Five Chairperson Regina M. James to Charles M. Reynolds, Jr. As stated herein above, in her letter, Regina James pledges her support of Mr. Reynolds' placement and operation of a CCC in the same general location as the one proposed by Plaintiff. See Exhibit "C" of Plaintiff's Complaint. In her letter, Regina James comes right out and says that "I support you and your associates (sic) bid on the RFP—2000706MA Center 4 located at 1355-57 New York Avenue, NE, Washington, D.C. 20002," and that "...it is my pleasure and privilege to endorse and support your bid on the RFP—2000706MA." The RFP mentioned by Regina James is for the same BOP

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CCC facility for which Plaintiff has been awarded a contract. As such, Defendants have no real concerns about safety, and are not seeking justice in their Court and BZA actions. Rather, Defendants are attempting to use the Court and BZA for the perverted purpose of shutting Plaintiff down, so that their hand-picked most favored CCC contractor can open its own facility in Ward 5. Apparently, in the eyes of Defendants, there is simply not enough room for two CCC contractors in Ward 5.

Plaintiff has moved the Court to issue a temporary restraining order and injunction enjoining the D.C. BZA hearing on Defendants' objection to Plaintiff's previously-issued building permit which is presently set for April 22, 2003 at 1:00 p.m. As explained more fully herein above, as well as in the Lowry Affidavit filed along herewith, the basis for Plaintiff's Motion is that Defendants' have initiated the BZA hearing in bad faith, and have done so solely in an attempt to harass Plaintiff and ultimately get its BOP contract terminated for default. While recognizing the general doctrine of abstention, the United States Supreme Court has made it clear that a Federal Court can interfere with and enjoin a pending state civil or administrative hearing if the state enforcement action is "motivated by a desire to harass or is conducted in bad faith..." Huffman v. Pursue, Ltd., 420 U.S. 592, 611, 95 S. Ct. 1200, 1212 (1975); see also, New Orleans Public Service, Inc. v. Council of

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opening the CCC facility will cost Bannum approximately twelve thousand dollars ($12,000) in revenues. More importantly, should Bannum not be able to perform, the BOP will be forced to terminate the contract for default. A termination for default would be devastating to Bannum's business goodwill and reputation with the BOP, its only customer and source of business and revenue. In fact, the BOP could go so far as to debar Bannum from contracting with the Federal Government altogether. At a minimum, a termination for default would severely and significantly adversely affect Bannum's past performance rating, the most heavily weighted factor used by the BOP in evaluating competing proposals for all CCC contracts. A termination for default would surely put Bannum at a competitive disadvantage causing Bannum to be de facto debarred, if not officially debarred from Federal Government Contracting.

On the other hand, Defendants will suffer no harm if they are enjoined from any further defamation of Plaintiff or interference with Plaintiff's contract and business relationship with the BOP.

(4) Public Interest:

The final factor courts consider when analyzing a request for a temporary restraining order or preliminary injunction is the "public interest." In the instant case, the public interest in granting the relief requested herein is great. Through the

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City of New Orleans, 491 (U.S. 350, 109 S.Ct. 2506 (1989) (holding that District Court's abstention was inappropriate in case involving State administrative proceeding); J.M.M. Corporation v. District of Columbia, 2003 WL 1785774 (D.D.C. 2003). As the Plaintiff has shown, Defendants' conduct is motivated by bad-faith, and the instant case is one where abstention clearly does not apply.

Furthermore, in the BZA proceeding, Defendants are objecting to Plaintiff's previously-issued building permit for the renovation and operation of a CCC in a location where they have *matter-of-right* zoning. As such, not only are Defendants acting in bad faith in the BZA proceeding, but the BZA is without jurisdiction to even consider an appeal of matter-of-right zoning. See Spring Valley Wesley Heights Citizens Association v. District of Columbia Board of Zoning Adjustment, 644 A.2d 434 (D.C. 1994) (holding that BZA lacked jurisdiction to proscribe university's matter-of-right use of building located in commercially zoned district.)

(2) & (3): Likelihood of Harm to Plaintiff and Defendant:

As stated above and in the Lowry Affidavit filed in support hereof, if Defendants are not enjoined from any further defamation and tortuous interference, then Plaintiff will be irreparably, and in all likelihood, fatally harmed rendering Plaintiff without an adequate remedy at law. Every day that Bannum is delayed in

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operation of its CCC, Bannum and the BOP will jointly provide a service to the community, creating jobs for the local economy, and, as shown in the studies referenced in David Lowry's Affidavit, make the neighborhood and community a safer place. Furthermore, it is clearly in the public's interest to stop Defendants from frivolously and maliciously utilizing the Court and justice system to pursue their own selfish agenda. To allow the Defendants to continue its abuse of process would cause a loss of confidence in the justice system by the public.

II. Motion for Expedited Discovery:

Pursuant to Rule 26(d) of the Federal Rules of Civil Procedure, Plaintiff respectfully moves this Court for leave to immediately begin discovery in this case prior to the Rule 26(f) Conference. Discovery will be for the limited purpose of gathering information for the hearing on Plaintiff's request for preliminary injunction against defendants. The injunctive relief which Plaintiff is seeking in this matter is of an extremely urgent nature, as it relates to Plaintiff's ability to utilize property for a contract with the United States Department of Justice, Bureau of Prisons, set to commence on or about April 15, 2003.

Rule 26(d) of the Federal Rules of Civil Procedure provides that "Except...when authorized...by Order...a party may not seek discovery from any source before the parties have conferred as

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required by Rule 26(f)." As stated hereinabove, Plaintiff filed the Complaint in this matter on April 8, 2003 and is attempting to serve the Defendants. As such, the parties have not yet conferred as required under Rule 26(f). However, given the urgency of this matter, and the potential for irreparable harm, Plaintiff respectfully requests that the Court allow it begin immediate discovery in this matter.

Rule 26(d) allows a party to take expedited discovery upon a showing of good cause. Yokahama Tire Corp. v. Dealers Tire Supply, Inc., 202 F.R.D. 612, 614 (D. Ariz. 2001). Expedited discovery may be appropriate in cases where the plaintiff seeks a preliminary injunction. Revlon Consumer Products Corp. v. Jennifer Leather Broadway, Inc., 858 F. Supp. 1268, 1269 (S.D.N.Y.1994), aff'd, 57 F.3d 1062 (2d Cir.1995); see Fed. R. Civ. P. 26 Adv. Comm. Notes (1993 Amendments to subdivision (d)) (expedited discovery is appropriate in "some cases, such as those involving requests for a preliminary injunction or motions challenging personal jurisdiction"); see also Pod-Ners, LLC v. Northern Feed and Bean of Lucerne Ltd. Liability Co., 204 F.R.D. 674 (D. Col. 2002).

Based on the foregoing, and in reliance on the affidavit of David Lowry filed simultaneously herewith and in support hereof, Plaintiff respectfully asks the Court, under Rule 26(d), to allow it to commence discovery immediately and prior to the Rule 26(f)

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conference. Plaintiff respectfully requests that the Court allow it to immediately begin review of Defendants' documents related to this action, as well as take depositions of all party Defendants and other key non-party witnesses. Plaintiff is in need of immediate discovery in order to gather information for the preliminary injunction hearing.

Conclusion

Based on the foregoing, Bannum respectfully requests that the Court:

(1) issue a temporary restraining order enjoining Defendants, Defendants' agents, employees and all other persons, firms or corporations acting or claiming to act in Defendants' behalf, or in concert or participation with Defendants, from any interference with Plaintiff's Federal Government contract and business relationship with the Federal Bureau of Prisons, including but not limited to its abuse of process before the Board of Zoning Adjustment ("BZA");

(2) issue a preliminary injunction enjoining Defendants, Defendants' agents, employees and all other persons, firms or corporations acting or claiming to act in defendants' behalf, or in concert or participation with Defendants, from any further interference with plaintiff's Federal Government contract and business relationship with the Federal Bureau of Prisons, including

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but not limited to its abuse of process before the Board of Zoning Adjustment ("BZA"); and

(3) grant Plaintiff's request for expedited discovery and allow it to immediately review Defendants' documents and to take depositions of party Defendants and key non-party witnesses.

CERTIFICATION BY COUNSEL

I HEREBY CERTIFY that on this 17th day of April 2003, I have sent notice to the Defendants CITIZENS FOR A SAFE WARD FIVE, INC., 1704 17th Street, NE, Washington, DC 20002 and DARRYLE A. CARTER, 534 Hamilton Street, NE, Washington, DC 20002, via certified mail, postage prepaid that counsel will electronically file Plaintiff's Motion for a Temporary Restraining Order, Expedited Discovery, and Preliminary Injunction at 10:00 AM on April 17, 2003. Counsel is also attempting to contact Defendants to try to agree to a time when both parties can present their side to the Court on Monday, April 21, 2003 regarding Plaintiff's Motion for a Temporary Restraining. In the event that the parties cannot agree to a time, counsel will attempt to present its Motion to the Court at 1:00 P.M. Monday, April 21, 2003.

Shawn C. Whittaker

Dated: April 17, 2003

Respectfully submitted,

Kevin M. Cox (pro hac vice motion pending)
Law Firm of Joseph A. Camardo, Jr.
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UNITED STATES DISTRICT COURT
FOR DISTRICT OF COLUMBIA

BANNUM, INC.

Plaintiff,

v. Civil Action No. 03-00848 PLF

CITIZENS FOR A SAFE WARD FIVE, INC.
and DARRYLE A. CARTER

Defendants.

AFFIDAVIT

STATE OF FLORIDA)
)
COUNTY OF PINELLAS) ss:

I, DAVID LOWRY, being over the age of majority and otherwise competent to make this affidavit state as follows:

1. I am over the age of eighteen (18) and am a resident of Pinellas County, Florida. I make this affidavit in support of Bannum's motion for a temporary restraining order, preliminary injunction, and expedited discovery in the above-captioned matter.

2. I am employed as the Executive Director of Bannum, Incorporated ("Bannum") headquartered in Clearwater, Florida.

3. Bannum is in the business of operating Community Corrections Centers ("CCC"s) pursuant to contracts awarded through competitive bidding by the United States Department of Justice, Federal Bureau of Prisons ("BOP") located in Washington, D.C. Bannum has CCCs currently operating in Florida, Alabama, North Carolina, South Carolina, West Virginia, Mississippi, Georgia, Nevada, and Texas.

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Attorneys for Plaintiff

4. Over the past nearly twenty (20) years, Bannum has successfully performed and completed dozens of CCC contracts for the BOP. More importantly, Bannum has spent countless business resources, and indeed the essence of its business operations and policy-making activities on the development of its business reputation and goodwill. This has been accomplished through Bannum's history of performance in operating current BOP programs and in preparing proposals for current and outstanding BOP solicitations for CCCs that are in the process of being awarded by the BOP.

5. Bannum is solely in the business of operating CCCs and the BOP is its only customer. Over the past almost twenty years, the BOP has awarded Bannum its CCC program contracts through competitive negotiated procurements after the issuance of requests for proposals ("RFP"s). In each of Bannum's CCC programs, it is solely the responsibility for all operational aspects of the program, including but not limited to the following: personnel hiring and management; real estate acquisition/leasing; the provision of food service; and the provision of all equipment and services necessary for the operation of the CCC.

6. In formulating its proposal for the RFP for CCC services in Washington, D.C., Bannum had to locate a property sufficient to house the program pursuant to BOP standards. Proof of the ability to use at least one proposed property for the program must be submitted to the BOP as part of Bannum's final proposal. In general, once the BOP awards a contract to Bannum, its proposal becomes the contract between Bannum and the BOP. Accordingly, the proof of Bannum's legal right to use the property Bannum submits as part of its bid, including proof of appropriate zoning, then becomes part of Bannum's contractual obligations to the BOP.

7. On or about March 24, 2000 and April 3, 2000, respectively, Bannum received RFP Number 200-0593-MA and RFP Number 200-06-04-MA, from the BOP for CCC services in the Washington, D.C. area. Ultimately, Bannum found a suitable property for lease at 2210 Adams Place, NE, Washington, D.C. ("2210 Adams Place"), and on November 16, 2000 obtained an option to lease the property subject to zoning verification, Bannum's ability to use the property as a CCC, and Bannum's award of the CCC contract.

8. In addition, Bannum began to meet with local officials in an effort to obtain zoning approval from the District of Columbia for the operation of a CCC. Specifically, Bannum representatives made several contacts, or attempts to contact, various D.C. officials and community leaders in the process of attempting to obtain the needed zoning approval. The following is a list of some of Bannum's efforts in this regard:

- November 30, 2000: Bannum notified Mayor Williams, Chief of Staff Omer and Police Chief Ramsey of its intention to locate a CCC at the subject property;
- December 11, 2000: Bannum obtained zoning approval from Michael Johnson, Zoning Administrator, District of Columbia;
- March 12, 2001: Bannum notified Councilman Orange of its plans to locate a CCC at the subject property;
- April 10, 2001: Bannum notified Mayor Williams, Councilman Orange, and Police Chief Ramsey of its intention to locate a CCC at the subject property;
- October 31, 2002: Bannum met with Wholistic Services, the business leasing the space next to Bannum at the subject property, and advised of its intention to locate the CCC at the subject property;
- November 26, 2001: Bannum obtained zoning approval from Olutoye Bello, Zoning Administrator for the District of Columbia;

- April 18, 2002: Bannum met with area senior citizens at Model Cities Wellness Center after issuance of a public announcement;

- April 18, 2002: Bannum met with ANC three leaders and Mr. Jenkins representing the Mayor at Washington Center for Aging Services (BOP representatives were also in attendance);

- April 18, 2002: Bannum met with PTA and parents at Langdon Elementary School after issuance of a public announcement (BOP representatives were also in attendance);

- April 18, 2002: Bannum met with the general community at Harbor Light Center after issuance of a public announcement (BOP representatives were also in attendance);

- April 19, 2002: Bannum met with area business owners at Washington Center for Aging Services to discuss the opening of the CCC;

- June 11, 2002: Bannum transported ANC leaders Chappelle and Bowser to Orlando, Florida to review Bannum's program operations at its CCC there;

- October 5-6, 2002: Bannum advertised in the Washington Post for all positions at the CCC;

- January 2, 2003. Bannum attempted to meet with Councilman Orange;

- January 2, 2003: Bannum met with Councilman Orange's Legislative Assistant;

- January 2, 2003: Bannum attempted to meet with Councilmember Patterson, Chairperson, Committee on the Judiciary;

- January 3, 2003: Bannum met with three persons representing the Bryant Street Homeowners Association;

- January 21,2003: Bannum met with "Citizens For A Safe Ward 5" after issuance of a public announcement (BOP representatives were also in attendance);

- February 11, 2003: BOP representatives met with "Citizens For A Safe Ward 5";

- Date Unknown: Bannum met with Councilman Orange's Chief of Staff;

- Date Unknown: Bannum met with Rhonda Chappelle, ANC leader of Ward 5 on two separate occasions; and

- Date Unknown: A Community Organizer with the D.C. Prisoners' Legal Services Project, Inc. was assigned in February, 2001 to assist Bannum in obtaining community support.

9. Ultimately, based in large part upon the representation from the District of Columbia of valid zoning for Bannum's proposed use of 2210 Adams Place as a CCC, the BOP awarded Bannum the CCC contract on November 16, 2001. Bannum's contract with the BOP calls for Bannum to operate a CCC for one hundred fifty (150) male offenders per day at 2210 Adams Place. The rate to which Bannum is entitled under the contract from the BOP is $80.00 per-man, per-day. Bannum is set to commence performance of the CCC contract on or about April 15, 2003. Both the BOP and Bannum heavily and detrimentally relied upon the District of Columbia's representations confirming zoning approval for Bannum's operation of a CCC at 2210 Adams Place. In fact, not only did the BOP award the contract to Bannum on the basis of the District of Columbia's zoning approval, but, upon information and belief, the BOP excluded all other competitors for failure to provide verification of zoning.

10. The BOP conducted a "pre-site inspection" of Bannum's proposed property at 2210 Adams Place on or about December 12, 2000. The purpose of this BOP "pre-site inspection" was to evaluate the proposed property in accordance with BOP standards for the CCC services contract. In furtherance of the lease agreement with 2210 Adams Place, a representative from Bannum attended said "pre-site inspection," as did 2210 Adams Place agents and three (3) representatives from the BOP.

11. After receiving notification of award of the BOP contract, and in reliance upon the District of Columbia's verification of zoning for Bannum's use of the property as a CCC, Bannum exercised its option to lease the property at 2210 Adams Place, and

began to pay rent, utilities, insurance, taxes, and common area maintenance pursuant to the lease agreement. In reliance upon the District of Columbia's verification of zoning for Bannum's use, Bannum began preparations for and the extensive renovations required to bring the property into compliance with BOP and contract standards and requirements. In further reliance upon the District of Columbia's verification of zoning for Bannum's use of the subject property as a CCC, Bannum signed a contract with a local general contractor to perform the renovations needed to the make 2210 Adams Place usable as a CCC, pursuant to which Bannum is obligated to pay in excess of three hundred thirty thousand dollars ($330,000), plus additional amounts for the District of Columbia area utility companies to bring the property into compliance for Bannum's use. Moreover, to date Bannum has incurred significant costs for architectural and engineering plans, building permits and fess and other items necessary to complete renovations to Bannum's facility. As of the date of this affidavit, Bannum has paid out costs in excess of three hundred thousand dollars ($300,000) in reliance upon the District of Columbia's actions. Bannum continues to incur more costs every day that passes leading up to the commencement of its performance of the contract.

12. On February 28, 2003, defendants published "FOR IMMEDIATE RELEASE" a press release entitled "Community Says Bureau of Prisons and Local Zoning Officials are to Blame for Halfway House Plans Making it This Far" (see copy of publication attached at Exhibit "A" of plaintiff's Complaint), wherein they advertised a meeting scheduled for March 5, 2003 at 6:30 p.m. at the Washington Center for the Aging, 2601 18th Street, NE, Washington, D.C. 20018. In its press release, defendants made clear their mission to put Bannum out of business, by stating that "[t]he group

(defendants) has vowed to continue its fight to stop the project, employing both a grassroots outreach component and the legal system (sic)." Not stopping there, defendants went on in its press release to make the following defamatory statements about Bannum:

> Over the last few weeks, since the CSWF's efforts began to stop the Bannum effort, one major issue has surfaced. **More important than Bannum's attempt to buy local official's votes by taking them to Orlando, Florida for three days and just as serious an offense as Bannum's blatant attempt to ignore the community's voice in the process, the issue is Bannum's attempt to ILLEGALLY usurp local zoning laws.**
>
> 'We have learned that Bannum has used some slick word play to confuse zoning officials regarding just what kind of facility they're planning to open. All of Bannum's supposed concurrences (sic) of their facility has (sic) been based on their (sic) apparent **intentional deception.** The facility funded by the US Bureau of Prisons is a HALFWAY HOUSE **NOT** a CORRECTIONAL DETENTION FACILTY OR INSTITUTION. You would have to believe that a major corporation like Bannum, Inc. with seventeen facilities across the country understands the difference between a halfway house and an institution (sic)," said Darryle A. Carter of Citizens for a Safe Ward 5, Inc.

13. Defendants accusations of bribing local officials and attempting to "ILLEGALLY usurp local zoning laws" are false. As evidenced by the foregoing, Bannum legally sought and received approval from the District of Columbia for the operation of a CCC at 2210 Adams Place. The District of Columbia made a determination that Bannum has zoning as a matter-of-right at 2210 Adams Place to operate a CCC. Upon information and belief, defendants made these outrageous and false accusations in an attempt to get plaintiff's zoning approval revoked, to force the BOP to terminate Bannum's contract, and to ultimately force Bannum out of town.

14. Following the publication of the foregoing press release, defendants carried their campaign to shut plaintiff down one step further by filing a frivolous action against Bannum in District of Columbia Superior Court. In the Superior Court action, Citizens for a Safe Ward Five members sought an injunction revoking Bannum's zoning approval and preventing the BOP from opening the CCC as scheduled. As stated herein above, the basis for defendant's Superior Court action, i.e. alleged criminal acts on the part of Bannum, is false and completely without merit. Notably, on April 8, 2003, the Superior Court denied the Citizens for a Safe Ward Five motion for preliminary injunction.

15. In addition to filing a frivolous action in Superior Court, the defendants have also filed an appeal with the Board of Zoning Adjustment ("BZA"), seeking to have Bannum's building permit revoked by challenging the zoning approval granted to it by the District of Columbia for operation of a CCC at 2210 Adams Place. Once again, defendants' suit is based on false representations made solely in an effort to shut Bannum down and interfere with its Federal contract and business relationship with the BOP.

16. Defendants further defamed plaintiff by publishing and posting on the streets of the District of Columbia a flyer falsely alleging, among other things, that Bannum is a "Halfway House...Housing Violent Criminals," that if Bannum opens its CCC, then "sex offenders, arsonists, and child molester (sic) will be allowed back into the community with all of us," and Bannum's "facility already houses developmentally disabled individuals" (see Exhibit "B" of plaintiff's Complaint). These allegations are clearly false for the following reasons: Bannum is proposing to open a "Community Corrections Center" or "CCC" pursuant to a contract with the BOP; the exact identity of

the residents who will be "housed" or "allowed back into the community" at the CCC are not even known; and Bannum's "facility" does not house "developmentally disabled individuals" as it has not even commenced its operations, nor will it when it does commence since the BOP does not place these individuals into its CCCs. These false statements were made by defendants in an obvious attempt to cause community uproar, outrage, and irrational fear as part of its ploy to force Bannum out of town.

17 As a result of defendants' actions and inactions, Bannum may have its zoning approval revoked by the Zoning Board of Adjustment ("ZBA") at the hearing scheduled for April 22, 2003. If Bannum loses its zoning approval for the subject property, its contract with the BOP for CCC services would be terminated for default for Bannum's failure to secure a facility at which to operate.

18. As further evidence of defendants' efforts to intentionally interfere with its BOP contract and business relations, on January 25, 2003 Citizens of Ward Five Chairperson Regina M. James, who notably was the plaintiff in the aforementioned Superior Court case, sent a letter to Charles M. Reynolds, Jr. in support of its placement and operation of a CCC in the same general location as the one proposed by plaintiff (see Exhibit "C" of plaintiff's Complaint) In her letter, Regina James states the following:

> I support you and your associates (sic) bid on the RFP—2000706MA Center 4 located at 1355-57 New York Avenue, NE, Washington, D.C. 20002. I know of the reputation and character of you and your vice-president, Mr. Samuel S. Howlette. I know that you and your organization strive for excellence.
>
> With that your organization has team (sic) up with Ms. Dennis M. Shelton whose integrity is impeccable. She is definitely an asset as your partner. She brings energy and excitement and is not only committed to the welfare and the quality of life of the inmates but to the community that she

> serves. She has my unadulterated support as your Director of the Facility at Center 4.
>
> With this quality of leadership within the community, it is my pleasure and privilege to endorse and support your bid on the RFP—2000706MA.

The foregoing letter was sent on the official letterhead of "Regina M. James, Advisory Neighborhood Commissioner 5B03." As clearly evidenced by the James letter, defendants' purported opposition to plaintiff's CCC in Ward 5 based on concerns of safety and negative impact on the surrounding neighborhood, as expressed in various defamatory publications, its Superior Court pleadings, and the BZA appeal papers, is feigned and, upon information and belief, done in a clear attempt to push Bannum out of the way in favor of defendants' hand-picked choice for a CCC operator in Ward 5. Defendants are opposing plaintiff's CCC in Court and before the BZA on these grounds, while at the same time pledging support for the opening of a CCC in the same neighborhood by one of plaintiff's competitors. Defendants' actions are clear evidence that they are opposed to plaintiff opening a CCC because they are politically aligned with Charles Reynolds, Jr., Ms. Dennis M. Shelton, and the BOP CCC which they are bidding on at this time, not because of the alleged concerns about which they have testified under oath before the BZA and Superior Court as late as April, 2003.

19. If defendants are not enjoined from any further defamation and tortuous interference, then plaintiff will be irreparably, and in all likelihood, fatally harmed rendering plaintiff without an adequate remedy at law. Every day that Bannum is delayed in opening the CCC facility will cost Bannum approximately twelve thousand dollars ($12,000) in revenues. More importantly, should Bannum not be able to perform, the BOP will be forced to terminate the contract for default. A termination for default

would be devastating to Bannum's business goodwill and reputation with the BOP, its only customer and source of business and revenue. In fact, the BOP could go so far as to debar Bannum from contracting with the Federal Government altogether. At a minimum, a termination for default would severely and significantly adversely affect Bannum's past performance rating, the most heavily weighted factor used by the BOP in evaluating competing proposals for all CCC contracts. A termination for default would surely put Bannum at a competitive disadvantage causing Bannum to be de facto debarred if not officially debarred from Federal Government Contracting.

20. On the other hand, defendants will suffer no harm if they are enjoined from any further defamation of plaintiff or interference with plaintiff's contract and business relationship with the BOP.

21. It is my belief from twenty-four years of experience in contracting with the BOP for CCC services that this program will be an asset to the community in which it is located. It is my further belief that the program will not adversely affect, but rather will promote, public safety in the community. In fact, I base my belief upon, among other things, the learned studies and articles attached to this Affidavit as Exhibit "1".

David A. Lowry

Sworn to before me this
11th day of April, 2003.

JOHN D. RICH
NOTARY PUBLIC
MY COMMISSION # DD 030008
EXPIRES: September 29, 2006
Bonded Thru Notary Public Underwriters

Notary Public

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

BANNUM, INC.	*	
	*	
Plaintiff,	*	
	*	
v.	*	Civ Action 1:03CV00848 PLF
	*	
CITIZENS FOR A SAFE WARD FIVE, INC.	*	
	*	
and	*	
	*	
DARRYLE A. CARTER,	*	
	*	
Defendant(s).	*	

TEMPORARY RESTRAINING ORDER

This cause was heard on Plaintiff's Complaint, Motion for a Temporary Restraining Order, Preliminary Injunction, and Expedited Discovery, Affidavit of David Lowry, and any opposition filed by the Defendants, pending hearing on Plaintiff's Motion for a Preliminary Injunction, from which it appears to the Court that Defendants are and will continue to intentionally interfere with Plaintiff's Federal Community Corrections Center ("CCC") contract and business relationship with the United States Department of Justice, Federal Bureau of Prisons ("BOP"), including but not limited to its abuse of process in D.C. Superior Court and before the Board of Zoning Adjustment ("BZA"), as set forth in Plaintiff's Complaint and affidavit of David Lowry, and will continue to carry out such acts unless restrained by order of this Court, and that Plaintiff will be irreparably harmed as a direct result of Defendants' conduct,

It is ORDERED, therefore, that:

1. Defendants, Defendants' agents, employees and all other persons, firms or corporations acting or claiming to act in Defendants' behalf, or in concert or participation with Defendants, are hereby restrained from any further interference with Plaintiff's Federal Government contract and business relationship with the Federal Bureau of Prisons, including but not limited to its abuse of process in D.C. Superior Court and before the Board of Zoning Adjustment ("BZA").

2. The Board of Zoning Adjustment Hearing requested by Defendants on Plaintiff's previously-granted building permit for the renovation and operation of a Federal Bureau of Prisons Community Corrections Center on 2210 Adams Place, NE in Washington, D.C., which is presently set for April 22, 2003 at 1:00 p.m., be and is hereby enjoined pending a hearing by the Court on Plaintiff's Request for a Preliminary injunction.

2. This order shall expire on _____, 2003, at 5:00 p.m. unless within such time this order for good cause shown is extended for a longer period, or unless Defendants consent that it may be extended for a longer period.

3. Plaintiff's Motion for Preliminary Injunction is set for a hearing on _____, 2003, at _____ a.m./p.m.

4. Plaintiff is granted leave to conduct expedited discovery pursuant to Rules 30, 34, and 45 of the Federal Rules of Civil

Procedure in this proceeding for the limited purpose of obtaining information in furtherance of its motion for a Preliminary Injunction.

Issued at: _____ a.m./p.m. on
the ____ day of April, 2003.

_____
The Honorable Paul L. Friedman
United States District Court